

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Beth A. Lange
Serial No. 10/741,678
Filed December 19, 2003
Confirmation No. 4168
For PRE-PACKAGED ABSORBENT ARTICLE AND SUN PROTECTION
ACCESSORIES ARRANGEMENT
Examiner David Fidei

Art Unit 3728

June 25, 2010

REQUEST FOR REHEARING UNDER 37 C.F.R. §41.52

This is a request for rehearing under 37 C.F.R. §41.52 from the Board of Patent Appeals and Interferences affirmation of the Examiner's rejection made in the Decision on Appeal decided April 27, 2010.

The Board Misapprehended the Disclosure of Ehrlich

In its Opinion, the Board respectfully misapprehended the disclosure of U.S. Patent No. 4,221,221 (Ehrlich). Specifically, the Board misapprehended Ehrlich in finding that Ehrlich "explicitly contemplates inclusion of other baby maintenance items in addition to or in place of the specifically illustrated powder, oil, and towel containers." See page 3 of the Decision. In support of its position, the Board cites to Col. 3, lines 17-20 of Ehrlich. This portion of Ehrlich provides that "[a]lthough a plurality of three container assemblies 16 are shown, it is obvious more or less may be used but the major elements of a powder, oil and maintenance towel are illustrated."

Just because Ehrlich discloses using more than three container assemblies adhered to a diaper does not necessarily mean that the container assemblies would contain anything but powder, oil, or a towel. It is quite possible that Ehrlich was

contemplating an embodiment of the diaper wherein more than one container assembly of powder, oil and/or towel was adhered thereto. For example, a diaper could be provided having one container assembly with powder therein, one container assembly with oil therein, and two containers assemblies with towels therein.

In the passage relied on by the Board, Ehrlich expressly refers to the powder, oil and towel as being the "major elements" of the container assemblies. In other words, the powder, oil and towel are the most important components of the container assemblies. Thus, why would one of ordinary skill in the art replace one of the "major elements" of the container assemblies with something completely unrelated to changing a diaper? They would not.

Accordingly, the passage relied on by the Board does not "explicitly contemplate[s] inclusion of other baby maintenance items in addition to or in place of the specifically illustrated powder, oil, and towel containers." Ehrlich only contemplates placing baby maintenance items used during and related to changing diapers (i.e., powder, oil, and towels) in the container assemblies disclosed therein and nothing more.

Thus, the Board misapprehended the disclosure of Ehrlich in finding that it discloses more than it actually does and relied on its misapprehension in finding the claims of this application obvious over Ehrlich in view of U.S. Patent No. 6,622,856 (Gallo).

Moreover, the Board opined that "a person of ordinary skill in the art would have appreciated that it would have been advantageous to include sunscreen, a well-known accessory for the care/protection of babies for outdoor activities, on the

diaper of Ehrlich, so that the sunscreen would be available when needed." See page 5 of the Board's Decision. Appellants respectfully submit that the Board's rationale is overly broad and overly inclusive.

Following the Board's rationale, attaching any of the baby care or baby protection products listed by Gallo to the diaper of Ehrlich would have been obvious to one skilled in the art so that they would be available when needed. The baby care/baby protection products provided below are listed in the same paragraph by Gallo's as sunscreen. See col. 5, lines 20-30 of Gallo.

Antibiotic ointments	Rubbing alcohol
Petroleum jelly	Cotton swabs
Saline drops	Sunscreen
Powder	Insect repellant
Syrup of Ipecac	Baby oil
Bandages	Instant ice packs
Nail clippers	Hydrogen peroxide
Anti-inflammatory creams	Aloe Vera lotions
Thermometer strips	Electrolytic solutions
Cotton balls	

It is appellants' position that, at best, it would have been obvious to attach only the products listed by Gallo that are related to changing a diaper (e.g., petroleum jelly, powder, baby oil) to the diaper of Ehrlich. It clearly would not have been obvious at the time of the present invention to attach any of the items disclosed by Gallo that are not related to changing a diaper to the diaper of Ehrlich. For example, clearly one skilled in the art would not have found it obvious to adhere a

container assembly having nail clippers, instant ice packs, or electrolytic solutions therein to the diaper of Ehrlich even though it would make them available when they are needed. As can be seen by these examples, the Boards rationale for attaching an assembly container having sunscreen therein to a diaper is in error. It would have been no more obvious to attach a container assembly having sunscreen therein as it would have been to attach a container having either a nail clippers, an instant ice pack or electrolytic solution. Accordingly, the Board's rationale for finding the claimed invention obvious over Ehrlich in view of Gallo was in error and cannot be maintained.

As a result, Appellants respectfully request that the Board's Decision upholding the Office's finding that claims 18, 23, 28 and 29 as being obvious over Ehrlich in view of Gallo be reversed.

Respectfully submitted,

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